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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TR.P.(C.) 15/2017 & CM No.2855/2016 (for stay)

PANNALAL RATHORE

..... Petitioner

Through: Mr. Priyadarshi Manish, Ms. Anjali J.
Manish and Ms. Nidhi Saini, Advs.

Versus

M/S W.H. DEETH (BALLABGARH) & CO.

..... Respondent

Through: Ms. Ripin Adlakha, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.10.2017

1. This petition, under Section 24 of the Code of Civil Procedure, 1908, seeks transfer of CS No.11404/2016 titled ***W.H. Deeth (Ballabgarh) and Co. Vs. Panna Lal Rathore*** pending in the Court of Ms. Neelofer Abida Perveen, Additional District Judge (ADJ) (South-East), Saket Courts, New Delhi to this Court to be taken up along with CS(OS) No.1094/2012 of this Court.

2. Notice of the petition was ordered to be issued and the counsel for the respondent appears and opposes the transfer.

3. The counsels have been heard.

4. The counsel for the petitioner has argued (i) that the petitioner Panna Lal Rathore is a tenant in a property owned by W.H. Deeth (Ballabgarh) and Co. (WHD); (ii) that the suit of which transfer is sought has been filed by WHD against the petitioner for ejectment of the petitioner and for recovery

of *mesne* profits; (iii) that CS(OS) NO.1094/2012 of this Court has been filed by the petitioner against WHD for specific performance of an agreement of sale of the said property by WHD in favour of the petitioner; (iv) that the petitioner has also filed another suit in this Court being CS(OS) No.2167/2013 for cancellation of an agreement of sale of property entered into by WHD in favour of one Adlakha; (v) that since all the suits pertain to the same property and the parties are the same and the suit for ejectment and *mesne* profits filed by WHD is pending in the District Court, only owing to the difference in pecuniary jurisdiction between the Courts, the suit for ejectment and *mesne* profits be also brought by transfer to this Court.

5. I have enquired from the counsel for the petitioner, whether the agreement to sell by WHD in favour of Adlakha is of a date prior to the agreement to sell claimed by the petitioner or of a date thereafter.

6. The counsel for the petitioner states that the agreement to sell in favour of Adlakha is of a date after the agreement to sell claimed by the petitioner in his favour.

7. I have next enquired from the counsel for the petitioner as to the need for CS(OS) No.2167/2013, inasmuch as even if a title had flown from WHD to Adlakha and which has not flown by way of an agreement to sell having been executed, the relief with respect thereto is available under Section 19(b) of the Specific Relief Act, 1963 in the suit for specific performance itself.

8. The counsel for the petitioner then states that he is not able to answer because he is not the main counsel.

9. The counsel having chosen to argue cannot on being asked a query take such a stand.

10. The counsel for the respondent states that the counsel arguing is in fact the main counsel. She also states that the agreement to sell, for cancellation whereof CS(OS) No.2167/2013 has been filed is in favour of Adlakha and another person.

11. In my view, there is no need to transfer the suit for ejectment and *mesne* profits to this Court, inasmuch as adjudication in the suit for ejectment and *mesne* profits and in the suit for specific performance of an agreement of sale of immoveable property is on entirely different parameters. While in the suit for ejectment and *mesne* profits, it is only to be seen, (a) whether there was a relationship of landlord and tenant; (b) whether the Civil Court has jurisdiction; and, (c) whether there is any subsisting lease, in a suit for specific performance, the existence of agreement to sell, readiness and willingness of the purchaser to perform his part of the agreement etc. are to be seen. Similarly there is no similarity between CS(OS) No.2167/2013 (even if were to be maintainable) and the suit of which transfer is sought. Merely because the landlord has agreed to sell the tenancy premises to the tenant does not come in the way of landlord seeking ejectment of tenant unless possession of the premises has been given to tenant in part performance of agreement to sell.

12. The transfer petition appears to be motivated to delay the disposal of the suit for ejectment. Judicial notice can be taken of the fact that disposal of suits particularly of the nature of ejectment and *mesne* profits, before the ADJ is much quicker and the petitioner appears to be not wanting the order

of ejectment against himself till the disposal of his suit for specific performance which may take considerable time.

13. The counsel for the petitioner at this stage states that there is an interim stay in favour of the petitioner in the suit for specific performance. If the said interim stay order comes in the way of execution of the decree for ejectment, if any passed, the petitioner would be entitled to the benefit thereof.

14. The counsel for the respondent complains that owing to the filing of the transfer petition, the recording of evidence in the suit for ejectment has been delayed.

15. There is no merit in the petition; the same is dismissed with costs of Rs.20,000/- to the counsel for the respondent. The payment of the said costs is made a pre-condition for further participation of the petitioner in the suit for ejectment.

RAJIV SAHAI ENDLAW, J.

OCTOBER 24, 2017

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